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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-eighth session

SUMMARY RECORD OF THE 1464th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 23 March 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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GE.01-41125 (EXT)

The meeting was called to order at 10.15 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 4) (continued)

List of States parties whose reports the Committee should consider at its fifty-ninth session (CERD/C/58/Misc.20/Rev.1, distributed during the meeting, in English only).

1. The CHAIRMAN drew Committee members' attention to document CERD/C/58/Misc.20/Rev.1, containing the list of reports from States parties received to date, those among them to be examined by the Committee at its fifty-ninth session, and the names of the country rapporteurs. He observed that consideration of the reports of certain States parties, in particular the initial report of the United States, would require more than two meetings, but felt that the Committee should be able to consider the reports of nine or ten States parties at its next session.

2. Mr. RECHETOV recalled that he had offered to act as rapporteur for the United States, which would be submitting its initial report at the fifty-ninth session of the Committee, and that Mr. Diaconu had proposed to join him to consider the specific question of the reservations made by the United States. Although in principle the Committee should not spend more time considering one report than another, he believed that three meetings would indeed be needed to consider the initial report of the United States.

3. Mr. ABOUL-NASR agreed with Mr. Rechetov but doubted that the Committee would be able to consider the reports of ten States parties at its fifty-ninth session as planned, since at least three States parties had submitted reports over 100 pages in length, meaning that their consideration would require quite some time.

4. Mr. DIACONU suggested that the Committee should decide to spend an additional hour, at the beginning of each of its afternoon meetings, on consideration of the report of the State party considered during the morning. That would enable it to have a more in-depth dialogue with certain States parties, such as China, Italy and the United States.

5. Mr. PILLAI objected to that proposal as implying a reduction in the speaking time granted to the delegations of other States parties. He recalled that the Sudanese delegation had expressed regret at the present session that it had not had enough time to answer the Committee's questions.

6. Mr. FALL also objected to Mr. Diaconu's proposal.

7. Mr. DIACONU said that in that case he reserved the right to request an extension of the consideration of a report if he deemed it necessary.

8. The CHAIRMAN took note of that remark. At its fifty-ninth session, the Committee would examine the reports of the first nine States listed in the document submitted to the Committee, namely Cyprus, Viet Nam, Ukraine, Italy, Morocco, Sri Lanka, the United States of America, China and Trinidad and Tobago. It was his understanding that the Committee had agreed to devote three meetings at its next session to consideration of the initial report of the

United States and three meetings to the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

9. It was so decided.

Review procedure

10. Mr. DIACONU proposed that the Committee secretariat should send a letter to the governments of States parties whose periodic reports were seriously overdue (review procedure), informing them that the Committee reserved the right to consider the situation of each of those States parties in the absence of periodic reports.

11. It was so decided.

Consideration of the proposal by Mr. Valencia Rodríguez for the establishment of a compensation mechanism for the victims of discrimination (document without a symbol, distributed during the meeting, in English only)

12. Mr. TANG CHENGYUAN emphasized that the establishment of a compensation mechanism for the victims of discrimination was an especially sensitive issue. It would have to be ascertained whether the procedure under consideration concerned discriminatory acts committed nationally or internationally. If the compensation was for international acts, the mechanism to be established would also have to be international, and the resulting problems could be extremely complex.

13. Mr. FALL said that the wording of the text submitted by Mr. Valencia Rodríguez could give rise to many problems for the States participating in the World Conference, in particular problems in connection with compensation for the victims of slavery and colonization which had not yet been resolved. He believed it would preferable to leave consideration of the principle of compensation for the victims of discrimination to the regional groups which would meet to prepare the Conference.

14. Mr. DIACONU said that the proposal made by Mr. Valencia Rodríguez raised the thorny issue of determining the time limits within which compensation could still be justifiably claimed. The fact was that, if a decision was made to apply twentieth century rules to nineteenth century reality, it would be difficult to argue against applying them equally to earlier periods. In addition, although members of the Committee could offer their expert services when asked to do so by a regional group, it would be preferable for them to do so as individuals and not on behalf of the Committee.

15. Mr. ABOUL-NASR said that compensation for victims was a complex and controversial but nevertheless crucial issue. Since it was enshrined in the Convention, it obviously fell within the Committee's purview and the six members of the Committee invited by the High Commissioner for Human Rights to take part in the World Conference could no doubt raise it during the World Conference.

16. Mr. YUTZIS expressed the view that it was premature to make a decision on so fundamental and controversial an issue when most of the Committee members were absent. He therefore proposed that consideration of the matter should be placed on the agenda of the fifty-ninth session of the Committee.

17. Mr. RECHETOV said that the proposal under consideration was well intended but nevertheless hard to translate into action. Compensation for the victims of racial discrimination depended on the good will of States. Moreover, the fact had to be faced that the international criminal tribunals set up by the international community had had few results. The text submitted by Mr. Valencia Rodríguez was vague on the effective establishment of the planned mechanism and the team of five personalities established to monitor implementation did not appear to have an active and decisive role. By the same token, it did not seem that the Committee would exercise any real influence on the process.

18. Mr. THORNBERRY said that the principle of retroactivity would be difficult to apply to racial discrimination. Indeed, the very concept of racial discrimination had not been satisfactorily defined until the twentieth century. For example, the manner of dealing with nineteenth century treaties between States and indigenous peoples was a highly sensitive issue in the draft United Nations declaration on the rights of indigenous peoples. Generally speaking, nations did not call international law into question on acceding to independence, rather they attempted to adapt existing international rules to their situation. States could be encouraged even more strongly to compensate victims, although it was doubtful such encouragement would have any effect.

19. The CHAIRMAN reminded the members of the Committee that the text under consideration had been drawn up at the request of the coordinator of the Asian group, who had called on the Committee's expert services with regard to two important points, namely compensation for victims of racial discrimination and the question of the Palestinian territories.

20. He summed up the discussion by stating that certain members had pointed out that no decision could be made at the present meeting because of the absence of a quorum and that the Committee as a whole agreed on the principle that the victims of racial discrimination were entitled to compensation. He did not consider it useful to continue the deliberations on whether on not to make a decision on the issues raised, since the Committee had already officially adopted a proposed amendment to the draft declaration and programme of action, to be inserted at paragraph 93, according to which the World Conference affirmed that compensatory measures were legitimate and necessary remedies for past acts of racial discrimination. The Committee had adopted another proposed amendment, point (h) of paragraph 92, urging States to incorporate article 6 of the Convention into their national legislation with a view to ensuring that the victims had effective remedies to secure both punishment of perpetrators and just and adequate reparation.

21. Mr. VALENCIA RODRÍGUEZ noted that compensation was covered by article 2, paragraph 2, and article 6 of the Convention. Compensation did not necessarily have to be financial; it could take the form of social, economic, cultural, environmental protection or tourism promotion programmes. States were sovereign, and it was therefore up to them to determine which measures they would apply. The World Conference could but encourage them

to take measures to compensate persons or groups who had been victims of racial discrimination. However, although it fell to States to adopt and implement compensation measures, there had to be an international mechanism to monitor implementation of those measures, failing which the principle of compensation for the victims of racial discrimination would remain a dead letter, as had so many of the provisions of declarations and action programmes. That mechanism could be the one designed to follow up implementation of the declaration and programme of action, as provided for in the draft declaration and programme of action of the World Conference drawn up by the secretariat (i.e. a team of five personalities of high moral standing and acknowledged impartiality), or another body, if the task was too great a burden for one mechanism alone.

22. He was aware that the ideas he had put forward raised many problems and that the Committee could not endorse them immediately. His aim had been to open debate on an important topic of concern. International law did not yet provide for rules on compensation, but then it was constantly evolving.

23. With regard to the question of the Palestinian territories, he invited Committee members to refer to one or two decisions that the Committee had made on the matter in the past. He welcomed the contributions of the Committee members who had participated in the discussion on compensation for the victims of racial discrimination, which boded well for further debate on the issue.

24. Mr. YUTZIS asked for Mr. Valencia Rodríguez's proposal and comments to be communicated to absent Committee members.

25. Mr. SHAHI endorsed that request, underscoring the quality and pertinence of Mr. Valencia Rodríguez's comments.

26. The CHAIRMAN asked the secretariat to send all the members of the Committee a copy of the summary record of the present meeting. He deeply regretted that only 11 of the Committee's 18 members were present, as that hampered discussion of important matters and undermined the Committee's image.

Thirteenth meeting of persons chairing the human rights treaty bodies

27. The CHAIRMAN reported briefly on the twelfth meeting of persons chairing the human rights treaty bodies and reminded Committee members that they could obtain the report of that meeting. Either the High Commissioner for Human Rights or the Deputy High Commissioner made a statement at each meeting of chairpersons and a joint half-day meeting was always held with the rapporteurs and special representatives, experts and chairpersons of working groups in charge of the special procedures of the Commission on Human Rights. At the thirteenth meeting of chairpersons, an entire day (instead of a half day) would be set aside for a meeting with representatives of Member States.

Closure of the session

28. The CHAIRMAN noted that the Committee had completed its programme of work and that, thanks to the contributions of its members, the session had been a fruitful one.

29. Mr. SHAHI said he thought it would be useful, with a view to the World Conference against Racism, for the secretariat to send the members of the Committee the report on the work of the Inter-sessional Working Group and the Preparatory Committee which were to meet in May.

30. The CHAIRMAN asked the secretariat to do so. He thanked all the secretariat members who had contributed to the smooth running of the session, in particular the Committee's Secretary. He declared that the fifty-eighth session of the Committee closed.

The meeting rose at noon.